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Dockets Management Branch
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

RE: FDA Request for Comment on First Amendment & Commercial Speech Issues

Dear FDA:

I write to urge the FDA to give public health priority over commercial speech considerations, and to do everything it can to defend its authority to restrict commercial speech in the effort to protect public health.

The FDA should emphasize that commercial speech serves promotional purposes much more than educational ones. These promotional purposes do not deserve constitutional protection and -- even when not technically untruthful or misleading -- may by omission, emphasis or emotional appeal spur consumer purchasing patterns that are contrary to public health goals.

The courts rationalize commercial speech protections on the grounds that commercial speech provides information to the public. If this is the goal -- rather than protecting an inherent right to advertise -- it makes sense for the government to make determinations about whether the commercial information actually will educate the public to advance public policy goals. In many instances, this will not be the case. And regulatory agencies are in better position to make such determinations than the courts.

If there are going to be commercial speech protections, it should be enough for the FDA or other federal agencies to show that regulations reasonably work to directly advance legitimate governmental goals. The FDA and other agencies should not be subject to a "least restrictive" test, where they are forced to show that there was no less speech restrictive means to achieve their goal. One can always imagine less speech restrictive means -- even if they are politically unachievable or would fail to work in practice.

Sincerely,



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Attn: 1st Amend + Comm. Speech

